

**U.S. Department of Labor
Bureau of International Labor Affairs
Office of Child Labor, Forced Labor and Human Trafficking**

FREQUENTLY ASKED QUESTIONS:

Executive Order 13126 of 1999

September 26, 2012

1. What is Executive Order 13126?

Executive Order (EO) 13126 (“Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor”) was signed by President Clinton on June 12, 1999. The Executive Order is intended to ensure that U.S. federal agencies do not procure goods made by forced or indentured child labor. That goal is consistent with current laws that, among other things, outlaw the importation of products made by forced or indentured child labor.

Under procurement regulations implementing the EO, federal contractors who supply products on a list published by the Department of Labor (DOL) must certify that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the items listed. Additional information on EO 13126 can be found on DOL’s Web site at: <http://www.dol.gov/ILAB/regs/eo13126/main.htm>.

2. How does EO 13126 define forced or indentured child labor?

Under Section 6(c) of EO 13126, “Forced or indentured child labor” means all work or service:

- (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
- (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

3. What does EO 13126 require from DOL?

The EO requires DOL, in consultation and cooperation with the Departments of Homeland Security (DHS)¹ and State (DOS), to publish a list of products, identified by their country of origin, that those Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor (EO List).

¹ EO 13126 refers to consultation and cooperation between DOL and the Departments of State and Treasury. However, with the establishment of the Department of Homeland Security in 2003, responsibilities relating to EO 13126 shifted from Treasury to Homeland Security.

4. How has DOL implemented EO 13126?

Pursuant to the EO, and following public notice and comment, DOL published a final List of products, identified by their country of origin, in the January 18, 2001 *Federal Register*. The EO List includes products that DOL, in consultation and cooperation with the Departments of State and Treasury, had a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor.

In addition to the EO List, DOL also published on January 18, 2001, a notice of procedural guidelines for maintaining, reviewing, and, as appropriate, revising the EO List. See 66 Fed. Reg. 5351. A copy of the procedural guidelines is available on DOL's Web site at:

<http://www.dol.gov/ILAB/regs/eo13126/main.htm>.

Pursuant to the procedural guidelines, the EO List may be revised through consideration of submissions by individuals or through DOL's own initiative. Based on both public submissions and DOL's own initiative, DOL issued an initial determination on September 10, 2009, announcing proposed revisions to the EO List. A September 11, 2009 *Federal Register* notice requested public comments for a period of 90 days. After thorough review of the public comments received, DOL, in consultation and cooperation with DHS and DOS, issued a final determination in the *Federal Register* on July 20, 2010 updating the EO List.

On December 16, 2010, DOL published another notice of initial determination to add one good and remove one good from the list, requesting public comment on these revisions. These two revisions were finalized in a May 31, 2011 final determination, bringing the total list to 29 goods from 21 countries.

On October 4, 2011, DOL issued an initial determination in the *Federal Register* proposing the addition of 2 new goods and 2 new countries to the EO List. These revisions were finalized in an April 3, 2012 final determination, bringing the total list to 31 goods from 23 countries.

On September 27, 2012, DOL issued an initial determination in the *Federal Register* proposing the addition of 4 new goods (dried fish, wolframite, cattle and fish) and 3 new countries (Bangladesh, South Sudan and Vietnam) to the EO List. With these proposed changes, the EO List would have 35 goods from 26 countries. The initial determination requests public comments through November 27, 2012.

5. How often is the EO List updated with new and removed items?

The List is updated on a periodic basis, depending on the nature and extent of information received through the process spelled out in the procedural guidelines, and as additional information becomes available.

6. How does DOL make determinations on revisions to the EO List?

ILAB staff conducts research on child labor and forced labor utilizing a wide variety of publicly-available primary and secondary sources. ILAB periodically publishes public requests for information on forced labor and child labor in the production of goods internationally, as well as information on government, industry or third-party efforts to combat these problems. ILAB also receives and reviews public submissions on an ongoing basis. ILAB's research includes funding for contracts and grants to gather qualitative and quantitative data on child labor and forced labor in the production of goods internationally.

Much of the EO information is assembled from DOL's research for its Congressionally-mandated annual report, *The Department of Labor's Findings on the Worst Forms of Child Labor*, as well as DOL's research for its mandate under the 2005 Trafficking Victims Protection Reauthorization Act (TVPPRA) to publish a list of goods that DOL's Bureau of International Labor Affairs (ILAB) "has reason to believe are produced by child labor or forced labor in violation of international standards."

Per the procedural guidelines, in evaluating information for inclusion of a product on the EO List, DOL, in consultation with DHS and DOS, considers and weighs several factors including:

- the nature of the information describing the use of forced or indentured child labor;
- the source of the information;
- the date of the information;
- the extent of corroboration of the information by appropriate sources;
- whether the information involved more than an isolated incident; and
- whether recent and credible efforts are being made to address forced or indentured child labor in a particular country or industry.

7. Have any goods been removed from the EO List?

Yes, charcoal from Brazil.

8. What process did DOL follow to remove charcoal from Brazil from the EO List?

The standard for removal of a product from the EO 13126 List is "significant reduction or elimination" of the problem. This can be accomplished through government, industry and/or third-party action.

The Government of Brazil (GOB) has taken an exemplary approach to the elimination of child and forced labor, including forced child labor, through both broad policy measures and targeted actions in specific industries, including charcoal production. It conducts an annual nationwide child labor survey to track progress in the elimination of child labor, and allocates significant resources for direct assistance to victims of both child labor and forced labor.

The GOB has strong child labor and forced labor laws in place; for example, it prohibits hazardous work for children under age 18, including work in charcoal production, and penalizes forced labor with fines and imprisonment of four to twelve years. The GOB generally enforces child labor and forced labor laws effectively. It carries out child labor inspections in all 26 states, monitors child labor through its Information System on Child Labor Hotspots and regularly trains labor inspections on child labor. Between 2003 and 2011, it conducted 26,907 labor inspections and rescued 70,782 children from child labor, including children working in charcoal production.

In addition, the GOB enforces forced labor laws through means such as the Ministry of Labor's "mobile inspection unit," which carries out inspections for forced labor, including forced child labor, in remote areas of the country. The unit is composed of teams of labor inspectors, Labor Ministry attorneys and members of the National Police. Currently, more than 100 labor inspectors are part of this unit. To resolve cases of forced labor, the unit can initiate formal charges and levy fines on-site. Between 1995 and 2011, inspectors found and removed more than 39,000 people from forced labor, including victims of forced labor in charcoal production. In 2010, the Federal Police investigated 323 cases of forced labor, and 177 forced labor lawsuits were filed in Brazilian courts. The government makes all labor inspection data available to the public, including information on cases of child labor and forced labor in charcoal production.

In 2010, the GOB approached ILAB with inspection data showing that, from January 2007 to September 2010, 1,924 labor inspections in 23 states found no child under 18 working under forced labor conditions in charcoal production.

To corroborate the GOB data, ILAB gathered information from a number of stakeholders actively engaged in forced labor issues, including forced child labor, in the charcoal sector. These sources included the ILO, Repórter Brasil, the Pastoral Land Commission (CPT) and the Citizens' Charcoal Institute (CCI), an association of Brazilian steel companies concerned about labor conditions, including forced labor, in their supply chains. Both the CPT and CCI provided monitoring data supporting the GOB's claims, although the CPT data differs slightly from the government's data. The CPT, which receives complaints of forced labor cases, carries out independent forced labor monitoring and also refers cases to the mobile inspection unit, reported that from June 2008 to August 2010, it submitted five complaints of forced labor in charcoal to the Ministry of Labor that involved 76 victims, including 10 children. The ICC, which independently monitors labor conditions in charcoal enterprises in the states of Pará, Maranhão, Tocantins and Piau, carried out 2,793 inspections in 158 municipalities, registered 145,917 charcoal kilns and reached out to more than 52,000 charcoal workers. It found no evidence of forced child labor in these businesses.

The Departments of Labor, State and Homeland Security determined that this data was recent, credible and appropriately corroborated, and that there was a reasonable basis to believe that forced child labor in charcoal production in Brazil had been significantly reduced. Charcoal from Brazil was removed from the EO 13126 List in May 2011.

9. Has DOL received any submissions under EO 13126 alleging products made by forced or indentured child labor?

In 2001, DOL received two submissions alleging the use of forced child labor in China. One was rejected for official review because it failed to provide sufficient evidence to meet the minimum standard of evidence. The other was accepted for official review, but no additions to the EO List were made due to the lack of recent, credible and appropriately corroborated information.

Also in 2001, DOL accepted for review a submission alleging conditions of forced child labor in the cocoa industry in Côte d'Ivoire. On May 10, 2004, DOL released a *Federal Register* notice notifying the public of its intent to continue monitoring the production of cocoa in Cote d'Ivoire, as well as requesting information regarding forced child labor in the cocoa industry in Cote d'Ivoire. Based on monitoring and additional information, cocoa from Cote d'Ivoire was included as an addition to the EO List in the notice of final determination published in the *Federal Register* on July 20, 2010.

In 2007, DOL accepted for review an allegation of forced child labor in China in the production of bricks, tiles, coal, foundry products, chemicals, cotton, grape products, toys, and fireworks. Based on research and additional information collected, bricks, cotton, electronics and toys were included as an addition to the EO List in the notice of final determination published in the *Federal Register* on July 20, 2010. Tiles, coal, foundry products, chemicals, grape products and fireworks were not included as an addition to the EO List due to the lack of recent, credible and appropriately corroborated information.

10. What is the effect of a product being put on the EO List?

Pursuant to Section 3 of the EO, the Federal Acquisition Regulatory Councils published a final rule in the *Federal Register* on January 18, 2001, providing that federal contractors who supply products that appear on the EO List issued by DOL must certify to the contracting officer that the contractor has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce or manufacture any end product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor.

The regulation also imposes other requirements with respect to contracts for products on DOL's EO List. The following remedies are available for violations relating to the requirements outline above: termination of the contract, suspension of the contractor; or debarment of the contractor for a period not to exceed 3 years. See 48 CFR 22.1504(b). These requirements are primarily enforced by the General Services Administration; DOL has no enforcement authority related to the EO procurement requirements.

11. Why is the EO limited to products made by forced or indentured child labor? Why not all child labor?

DOL undertakes efforts on several fronts to address child labor globally, including research on child labor, administration of international technical cooperation programs to combat child labor, and raising awareness on the topic. The EO List is just one piece of DOL's global efforts. The EO was designed to be consistent with current U.S. law, which prohibits the importation of products made by forced or indentured labor.

12. What procurement is covered by EO 13126? Are purchases by United States embassies and military bases abroad covered?

The EO applies to all purchases made by the Federal government, both domestically and in overseas facilities including military bases and embassies. However, there are general exceptions that apply as outlined in 48 CFR Subpart 22.15, such as exemptions for products from Canada, Israel, Mexico and certain other trading partners.

13. What are the consequences for countries with products included on the EO List?

The EO only affects U.S. federal government procurement. It is designed to make sure that U.S. federal government agencies do not buy products made by forced or indentured child labor. The EO reinforces the current law (the Tariff Act, enforced by DHS) prohibiting importation of products made by forced or indentured child labor.

There is nothing in the EO that provides for trade sanctions or penalties against countries. Current federal law already prohibits importing goods made by forced or indentured child labor. The EO is not intended to prohibit U.S. federal government agencies from buying a product that appears on the EO List published by DOL. Instead, it requires federal contractors who furnish such a product to make certifications designed to help ensure that forced or indentured child labor was not, in fact, used to make the product.

14. How can the public provide information to support adding goods to or removing products from the List?

DOL seeks studies, reports, statistics, news articles, electronic media, or other sources that establish the presence or absence of a significant incidence of forced or indentured child labor in the production of a particular product in a country. DOL also welcomes information on government, industry, or third-party efforts that demonstrate that such efforts have significantly reduced if not eliminated the problem. Where applicable, information submissions should indicate their source or sources, and copies of the source material should be provided. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. Classified information will not be accepted. Please refer to "Section D. How May a Person Submit Information to the Office Regarding

Adding or Deleting a Product From the List?” of the procedural guidelines for further details and submission instructions. Information can also be sent to EO13126@dol.gov.

15. What is the difference between the TVPRA List of Goods and the EO 13126 List of Products?

The EO List is intended to ensure that U.S. federal agencies do not procure goods made by forced or indentured child labor. Thus the EO List differs from the TVPRA List, which is intended to promote efforts to monitor and combat forced labor and child labor in the production of goods in foreign countries. The EO on U.S. federal government procurement applies only to the goods on the EO List, not to those on the TVPRA List. In addition, the EO List covers forced or indentured child labor, while the TVPRA List focuses on a broader population, including adults in forced labor and children in exploitive labor that is not necessarily forced or indentured.